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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92056816
Party	Defendant VIA Technologies, Inc.
Correspondence Address	IRENE Y LEE RUSS AUGUST & KABAT TWELFTH FLOOR , 12424 WILSHIRE BLVD LOS ANGELES, CA 90025 UNITED STATES ilee@raklaw.com, azivkovic@raklaw.com, lruess@raklwa.com, rgook-in@raklaw.com, nmeyers@raklaw.com
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Signature	/Irene Y. Lee/
Date	05/11/2015
Attachments	3329-US2 150511 Dec. IYL re Opp to Google's Motion to Amend.pdf(85029 bytes) EXH 1 - Google's Letter - Dec 18 2012.pdf(148040 bytes) EXH 2 - VIA's Am Rsp to Google's ROG_Redacted.pdf(196126 bytes) EXH 3 - VIA's Second Amended Rsp to Google's Rogs .pdf(238943 bytes) EXH 4 - Amy Wu Depo .pdf(44124 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Google Inc.,

Petitioner,

v.

VIA Technologies, Inc.,

Registrant.

Cancellation No.: 92056816

Registration No.: 3,360,331

Mark: CHROME

Issued: December 25, 2007

Registration No.: 3,951,287

Mark: CHROME

Issued: April 26, 2011

**DECLARATION OF IRENE Y. LEE IN SUPPORT OF OPPOSITION TO PETITIONER
GOOGLE, INC.'S MOTION FOR LEAVE TO AMEND PETITION FOR
CANCELLATION**

I, Irene Y. Lee, hereby declare as follows:

1. I am a partner at the law firm Russ, August & Kabat ("RAK"), counsel of record for Registrant VIA Technologies, Inc. ("VIA") in these cancellation proceedings. Unless otherwise stated herein, I make this statement in support of VIA's opposition to the motion for leave to amend petition for cancellation filed by petitioner Google, Inc. ("Google") based on my personal knowledge.

2. Attached as **Exhibit 1** is a true and correct copy of the letter I received from Ms. Janet Cullum on December 18, 2012.

3. Attached as **Exhibit 2** is a true and correct copy of VIA's Amended Response to Google's Interrogatory No. 4 served on Google on or about September 9, 2013.

4. Attached as **Exhibit 3** is a true and correct copy of VIA's Second Amended Response to Google's Interrogatory No. 4 served on Google on or about May 30, 2014.

5. Attached as **Exhibit 4** are true and correct copies of relevant excerpts from Amy Wu's deposition taken on December 12, 2014.

6. On or about February 26, 2015, I met and conferred with Google's counsel telephonically to discuss outstanding discovery issues. During the meet and confer, under Rule 26 of the Federal Rules of Civil Procedure, VIA agreed to supplement production and serve amended interrogatory responses pertaining to goods and services that VIA was not seeking to delete in its motion to amend to further support VIA's continuous use of the CHROME mark on such products and services.

Pursuant to 28 U.S.C. § 1746 and Rule 2.20 of the Trademark Rules of Practice, I hereby declare that all statements made herein on personal knowledge are true; and all statements made herein on information and belief are believed to be true.

Executed on May 11, 2015 at Los Angeles, California.



Irene Y. Lee

Ex. 1



Janet L. Cullum
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VIA EMAIL AND FIRST CLASS MAIL
ILEE@RAKLAW.COM

December 18, 2012

Irene Y. Lee, Esq.
Russ August & Kabat
12424 Wilshire Boulevard
Los Angeles, CA 90025

RE: CHROME Mark

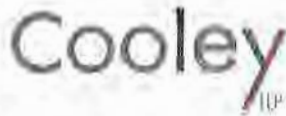
Dear Ms. Lee:

Cooley LLP represents Google Inc. in intellectual property matters. This letter is further to the discussions which have taken place between Google and your client, Via Technologies, Inc. ("Via"). Google has asked us to take over these discussions. We understand that for some time Google and Via have engaged in a dialogue regarding a potential purchase by Google of the rights, if any, which Via owns in the CHROME mark. Unfortunately, the parties have been unable to reach an agreement on a purchase price. Although Via's letter of October 23 suggested it was considering a claim against Google for "reverse confusion," it appears that Via has now changed its position; and we understand that Via has recently threatened to sell any such rights to the "highest bidder" and suggested that third parties may be interested in acquiring the registrations in order to attempt to disrupt Google's use of the CHROME mark.

Having reviewed the relevant history, and for all of the reasons set forth below, we see no merit to either of Via's threatened courses of action.

Over four years ago, in 2008, Via expressly consented to Google's use of the CHROME mark. This oral consent has been confirmed in the parties' subsequent course of dealing, during which Via has acquiesced in the face of Google's adoption and widespread use of the CHROME mark across a number of products. Notably, despite the duration and extent of its use of CHROME, Google has experienced no instance of actual confusion with Via and, despite Google's inquiries to you for evidence of the same, Via has been unable to produce any such evidence. Google is highly confident there is no actual and no likely confusion as a result of its use of CHROME. As Google has made clear, acquisition of Via's registrations is useful to Google to facilitate and expedite its registration of the CHROME mark in certain jurisdictions but Google does not now nor has it ever considered that it requires those rights in order to use and register the CHROME mark.

Via's current rights in the CHROME mark are at best suspect. As you are aware, Via must be using the mark in commerce in order to have valid trademark rights. Again, despite Google's repeated requests to you for evidence to substantiate the value you claim exists in Via's CHROME rights, Via has refused to provide any evidence of use and in fact you recently advised that Via will not provide any such evidence. **As Google has previously noted, Via's U.S. registrations are vulnerable to cancellation based on the overbroad list of goods and services for**



Irene Y. Lee, Esq.
December 18, 2012
Page Two

which it, apparently falsely, claimed to have used the mark and also appear to be independently vulnerable to cancellation for non use. A cancellation action will entitle Google to full discovery on these issues and a successful petition will result in cancellation of the registrations in their entirety. Of course, since Via's international registrations were achieved under the Madrid Protocol, cancellation of the U.S. registrations will result in cancellation of the International Registrations as well. Moreover, our further research suggests that Via's international registrations are subject to cancellation on various other independent grounds.

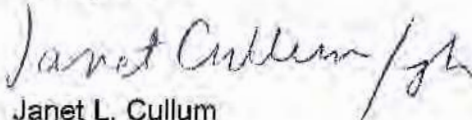
Turning to your most recent conversation with Google and Via's purported plan to offer to sell the CHROME rights to others, you must appreciate that any legitimate buyer will require the very same assurances that the mark is valid as those requested by Google. As in the typical intellectual property asset sale, Via will no doubt be required to make representations and warranties about not only the scope of its rights given its use or non use of the mark but also about any encumbrances on the mark such as consent agreements, any vulnerabilities in the registrations such as lack of use, and any potential claims such as cancellation actions.

As you must also be aware, a purchaser of a mark is not automatically entitled to the benefit of any rights the seller may have in the mark. A mark conveys the goodwill of the owner earned over time in the marketplace. In order to prove continuity of use so as to attribute that goodwill to the buyer, the law requires that the buyer use the mark on products that are sufficiently similar to those of the seller. See 3 *McCarthy on Trademarks and Unfair Competition* § 17:23 (4th ed. 2012) (earlier use may be relied upon for priority purposes only where the "products are closely related"); see also *Visa, U.S.A., Inc. v. Birmingham Trust Nat'l Bank*, 696 F.2d 1371, 1375 (Fed.Cir.1982) (valid assignment of a mark must include "the transfer of the goodwill to which the mark pertains," such that mark "continues to be associated with the same or similar products after the assignment" (internal quotation omitted)). Thus, even if Via can show some use of the mark, that limited use will be a constraint on the rights acquired by any buyer.

Google entered into negotiations with Via in good faith based in large part on Via's close relationship with an important Google partner. In that spirit, Google made a substantial offer of over \$1,000,000 for Via's rights without requiring any substantiation of the value of those rights. Via's demand for \$30,000,000 is simply not supported by the facts and suggests that Via is not dealing in good faith. Google remains hopeful that the parties can reach an amicable resolution and in that spirit remains willing to continue good faith negotiations. To that end, please give me a call at your earliest convenience to discuss how the parties might resume productive discussions.

Sincerely,

Cooley LLP


Janet L. Cullum

Ex. 2

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Google, Inc., Petitioner, v. VIA Technologies, Inc., Registrant.	Cancellation No.: 92056816 Registration No.: 3,360,331 Mark: CHROME Issued: December 25, 2007 Registration No.: 3,951,287 Mark: CHROME Issued: April 26, 2011
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**REGISTRANT VIA TECHNOLOGIES, INC.'S AMENDED RESPONSES TO
PETITIONER GOOGLE, INC.'S FIRST SET OF SPECIAL INTERROGATORIES**

PROPOUNDING PARTY: PETITIONER GOOGLE, INC.

RESPONDING PARTY: REGISTRANT VIA TECHNOLOGIES, INC.

SET NUMBER: ONE

PRELIMINARY STATEMENT

These responses are made pursuant to Rule 33 of the Federal Rules of Civil Procedure, solely for the purposes of this action. Each response is subject to all objections as to competence, relevance, materiality, propriety and admissibility, and any and all other objections and grounds which would require the exclusion of any statement herein if the questions were asked of, or any statements contained herein were made by, a witness present and testifying in court, all of which objections and grounds are reserved and may be interposed at the time of trial.

Registrant VIA Technologies, Inc. ("Registrant") has not completed its investigation of the facts relating to this case, and has not completed discovery in this action, and has not completed preparation for trial. The following responses are based upon information presently

INTERROGATORY NO. 4:

Describe in detail all goods and/or services with which the CHROME MARKS have been or are currently being used by any PERSON.

RESPONSE TO INTERROGATORY NO. 4

In addition to the General Objections set forth above, Registrant further objects to this Interrogatory to the extent it seeks the information that is protected from discovery by the attorney-client privilege and/or the work product doctrine. Registrant further objects that this Interrogatory is vague, compound, and unduly burdensome. Registrant further objects to this Interrogatory to the extent that it is overbroad and not relevant or reasonably calculated to lead to admissible evidence.

Subject to the foregoing general and specific objections Registrant responds as follows:

The CHROME MARKS have been and/or are currently being used on a wide variety of multi-media and computer related products, including but not limited to graphics/video related products. Additionally, as Registrant is a graphics chip provider, it is important to understand that many of its customers utilize its products in a variety of applications, including, for example, the Fujitsu S6520 Notebook and the ARTIGO system.

VIA is informed and believes and based thereon alleges that the CHROME MARKS have been or are currently being used in connection with the following goods and services:

Computers, namely, personal computers, portable computers, notebook computers, microcomputers, desktop computers; computer system components, parts and fittings, namely, motherboards, central processing units (CPUs), base PC modules, computer hardware, namely,

semiconductors, microprocessors, graphics processors, integrated circuits, computer chips, computer motherboards, computer graphics boards, computer interface boards, computer accelerator board, circuit boards, computer memory cards, memory chips, computer firmware, namely, computer utility software and other computer software used to maintain and operate computer system all stored in a computer's read only memory or elsewhere in the computer's circuitry, operating system software; printed and electronic instructional manuals, specification sheets, data sheets, computer reference manuals, user guides and documents providing instruction in the use and operation of various electronic digital devices, sold as a unit therewith the aforesaid good; computer services, namely, providing on-line information available on computer networks, global information networks and wireless communication networks in the fields of the design, development and customization of computer hardware, computer software, computer graphics software, information technology, wireless communication devices, multimedia technology, robotics, namely, the design and development of new technology in the field of robotics, business computing and environmentally-friendly computing, and specifically excluding computer games and video games, using both an interactive and non-interactive format; technical support services, namely, troubleshooting of computer hardware and software problems in person, by telephone, by electronic, computer and communications networks; provision of computer systems analysis and computer diagnostic services; design of computer hardware, integrated circuits, computer networks and communications hardware and software for others; consultancy in the field of design, development, configuration, installation, updating, upgrading or maintenance of computer software - excluding computer game and video game software; computer programming for others; research and development of 3d content, 3d technology and

processes, 3d animation technology, 3d processing power, 3d techniques, and flexible forward projection; creating, designing and maintaining web sites.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing **REGISTRANT VIA TECHNOLOGIES, INC.'S AMENDED RESPONSES TO PETITIONER GOOGLE, INC.'S FIRST SET OF SPECIAL INTERROGATORIES** was served by electronic mail on September 9, 2013, upon counsel of Petitioner:

COOLEY LLP
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/s/ Josie Mercado

Josie Mercado

Ex. 3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Google, Inc.,

Petitioner,

v.

VIA Technologies, Inc.,

Registrant.

Cancellation No.: 92056816

Registration No.: 3,360,331

Mark: CHROME

Issued: December 25, 2007

Registration No.: 3,951,287

Mark: CHROME

Issued: April 26, 2011

**REGISTRANT VIA TECHNOLOGIES, INC.'S SECOND AMENDED RESPONSES TO
PETITIONER GOOGLE, INC.'S FIRST SET OF SPECIAL INTERROGATORIES**

PROPOUNDING PARTY: PETITIONER GOOGLE, INC.

RESPONDING PARTY: REGISTRANT VIA TECHNOLOGIES, INC.

SET NUMBER: ONE

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Registrant VIA Technologies, Inc. ("VIA") hereby supplements its response to Petitioner Google, Inc.'s Interrogatory Nos. 4 as follows:

GENERAL OBJECTIONS

VIA incorporates by reference Preliminary Statement and General Objections set forth in Registrant VIA Technologies, Inc.'s Amended Responses to Petitioner Google, Inc.'s First Set of Special Interrogatories dated September 5, 2013.

INTERROGATORIES

INTERROGATORY NO. 4:

Describe in detail all goods and/or services with which the CHROME MARKS have been or are currently being used by any PERSON.

RESPONSE TO INTERROGATORY NO. 4

In addition to the General Objections set forth above, Registrant further objects to this Interrogatory to the extent it seeks the information that is protected from discovery by the attorney-client privilege and/or the work product doctrine. Registrant further objects that this Interrogatory is vague, compound, and unduly burdensome. Registrant further objects to this

Interrogatory to the extent that it is overbroad and not relevant or reasonably calculated to lead to admissible evidence.

Subject to the foregoing general and specific objections Registrant responds as follows:

personal computers, portable computers, notebook computers, microcomputers, desktop computers, motherboards, central processing units (CPUs), semiconductors, microprocessors, graphics processors, integrated circuits, computer chips, computer motherboards, computer graphics boards, computer interface boards, computer accelerator board, circuit boards, computer memory cards, memory chips, computer firmware, namely, computer utility software and other computer software used to maintain and operate computer system all stored in a computer's read only memory or elsewhere in the computer's circuitry, operating system software, printed and electronic instructional manuals, specification sheets, data sheets, computer reference manuals, user guides and documents providing instruction in the use and operation of various electronic digital devices, sold as a unit therewith the aforesaid good, technical support services, namely, troubleshooting of computer hardware and software problems in person, by telephone, by electronic, computer and communications networks, provision of computer systems analysis and computer diagnostic services, design of computer hardware, integrated circuits, computer networks and communications hardware and software for others, consultancy in the field of design, development, configuration, installation, updating, upgrading or maintenance of computer software - excluding computer game and video game software, and research and development of 3d content, 3d technology and processes, 3d animation technology, 3d processing power, 3d techniques, and flexible forward projection.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing **REGISTRANT VIA TECHNOLOGIES, INC.'S SECOND AMENDED RESPONSES TO PETITIONER GOOGLE, INC.'S FIRST SET OF SPECIAL INTERROGATORIES** was served by Federal Express on May 30, 2014, upon counsel of Petitioner:

COOLEY LLP
Janet L. Cullum - jcullum@cooley.com
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/s/ Josie Mercado
Josie Mercado

Ex. 4

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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GOOGLE, INC.,)
Petitioner,)
) Cancellation
vs.) No. 92056816
VIA Technologies, Inc.,)
Registrant.)
_____)

VIDEOTAPED DEPOSITION OF AMY WU
FRIDAY, DECEMBER 12, 2014

Job No. CS1977557

PAGES 1 - 229

1 A Yes. 9:27:15AM

2 Q Okay.

3 A Only the recent two or three will be in
4 the folder.

5 Q Okay. 9:27:20AM

6 You said two or three would be in the --

7 A The recent two or three will be on the
8 folder in my -- on my Mac.

9 Q On your Mac. Okay.

10 So the Mac Air would have the most recent 9:27:31AM
11 two or three presentations?

12 A Yes. Correct.

13 Q Okay.

14 And with respect to --

15 I just want to back up here real quickly. 9:27:46AM

16 Can you state your title for -- that you
17 have right now at VIA Technologies?

18 A Assistant Director, Product Marketing.

19 Q Okay.

20 What are your responsibilities as 9:28:00AM

21 Assistant Director of Product Marketing?

22 A Present VIA product to the customer in
23 Japan and market the products and also work on the
24 roadmaps and target the different market; depends on
25 what market's available. 9:28:28AM

1 Q Okay. 9:28:31AM

2 Do you handle products that are marketed
3 by VIA in the United States?

4 A No.

5 Q So what types of products do you handle 9:28:44AM
6 outside the United States only?

7 A I would say two months ago only Japan or
8 Korea. From two months ago, and then I start
9 working on some of the U.S. case.

10 Q Let me clarify that, then. So up to two 9:29:06AM
11 months ago, you were only working on marketing
12 products to --

13 A Japan region.

14 Q -- Japan and Korea?

15 A Korea region, yes. 9:29:17AM

16 Q Okay.

17 But in the last two months, what are your
18 responsibilities as far as marketing?

19 A I -- I cover some of the market in U.S.

20 Q How long have you been employed by VIA 9:29:38AM
21 Technologies?

22 A Since 2000, August.

23 Q August of 2000?

24 A I can't...

25 October 2000. 9:29:54AM

1 create.

9:50:25AM

2 Q Okay.

3 Then VIA Technologies, after they create
4 the UMA product, then they sell it to another
5 entity; is that correct?

9:50:36AM

6 A Correct.

7 Q And those entities create computers and
8 other devices; is that right?

9 A Yes.

10 Q Does VIA Technologies sell a computer
11 named Chrome?

9:51:10AM

12 MS. LEE: Objection; lacks foundation,
13 calls for speculation.

14 THE WITNESS: I don't know. I don't
15 handle those products; so I don't know.

9:51:19AM

16 BY MR. HUGHES:

17 Q Are you aware of any computer products
18 named Chrome that VIA sells?

19 MS. LEE: Same objections.

20 THE WITNESS: I cannot recall.

9:51:35AM

21 BY MR. HUGHES:

22 Q So during this period of time from 2005 to
23 2006, what was your title at S3 Graphics?

24 A Product Manager.

25 Q So in 2006 to 2008, what was your title?

9:52:09AM

1 A Just our discrete graphic chip; that's 10:03:08AM
2 all.

3 Q Just the discrete graphic chip.

4 From 2006 to 2008, do you recall whether

5 VIA Technologies sold any products? 10:03:23AM

6 MS. LEE: Objection; lacks foundation,
7 calls for speculation.

8 THE WITNESS: I don't know those
9 information.

10 BY MR. HUGHES: 10:03:39AM

11 Q Do you recall whether from 2006 to 2008,
12 S3 Graphics was providing VIA Technologies with the
13 Chrome discrete graphic chip units?

14 A They buy from us.

15 Q Do you recall whether it was the same 10:04:14AM
16 process where VIA Technologies purchased the Chrome
17 discrete graphic chip units and then they
18 incorporated into --

19 What did you call them before?

20 A VIA buys the discrete graphic chip and put 10:04:31AM
21 into the motherboard, or they get our IP put into
22 their UMA chipset. So those two are two different
23 type of product.

24 Q Let's run that down quickly. Let's do the
25 UMA chipsets. Can you walk me through that process? 10:04:50AM

1 2011. So I have the same title. To me, the sales 11:11:02AM
2 team is one team.

3 Q But still within the -- the company even
4 today, there is separate --

5 A Not separate. 11:11:16AM

6 Q Not separate?

7 A For -- for the sales and marketing is one
8 team.

9 Q Sales and marketing, one team. Okay.

10 A Yes. 11:11:23AM

11 Q Since 2011?

12 A Yes.

13 Q And in 2013, what were your primary
14 responsibilities?

15 A Selling the discrete graphic GPU from -- 11:11:32AM
16 made by S3 and also the discrete graphic GPU board,
17 5400, 5300, 4300, 4400, E2000, we all call Chrome,
18 and then 4500. So all the product start with Chrome
19 and then the product number.

20 Q All of those Chrome products were discrete 11:12:07AM
21 graphic chipsets?

22 A Discrete graphics chipset.

23 Q Okay.

24 A And I sell the VX900 Chrome -- Chrome9 to
25 Toshiba, to Panasonic, to Hitachi, to NEC. 11:12:21AM